IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.119/2007.
In
S.B. CIVIL WRIT PETITION NO.5720/2004.

Babu Lal Saini
Vs.
Jaipur Development Authority & Anr.

Date of Order:- October 23, 2007.

PRESENT
HON'BLE THE CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Sanjeev Prakash Sharma with
Mr. Abhinav Sharma for the appellant.
Mr. Rinesh Gupta for the respondent.
Mr. Pradeep Choudhary Intervener.

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BY THE COURT:-

The instant appeal is directed against the judgment dated November 20, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition No.5720/2004 by which the prayers made by the appellant (i) to set-aside the order dated June 23, 2004 passed by the JDA Appellate Tribunal directing the petitioner to demolish the encroachment made on the land in question; (ii) to declare that the petitioner is entitled to seek regularization of the property which is in his possession for more than last 15 years, (iii) to direct the JDA to accept the amount

of cost of remaining land which is in his possession in Krishna Vihar Colony and (iv) to set-aside the map prepared by respondent No.1 showing the excess land on the road side of his plot and back side marked in green colour, are refused.

According to the appellant, he purchased Plot No.82 from New Pink City Grah Nirman Sahakari Samiti Ltd. on August 24, 1987. The case of the appellant is that he was granted patta of the land in question by the JDA on March 18, 2000. It is an admitted position that the appellant had made encroachment which was sought to be demolished. Therefore, the appellant filed a reference before the JDA Appellate Tribunal. The Tribunal restrained the JDA from interfering with the possession of the land by the appellant. It is the case of the appellant that JDA again sought to demolish the property and, therefore, another reference was made. The Tribunal directed the JDA to prepare a map indicating encroachment made by the appellant. Accordingly, the JDA prepared the map indicating encroachment made by the appellant on another part of the area also. Therefore, the Tribunal vide order dated July 27, 2004 directed the appellant to remove encroachment. According to the appellant, as per the original plan, the encroachment was required to be removed from the

front portion of the house but encroachment made in the back portion of the house was sought to be removed in view of preparation of subsequent map which was illegal. It was also the case of the petitioner that removal of encroachment from back side of his house was made to benefit another residential colony which is not regularized. What was claimed by the petitioner was that because of the removal of encroachment by the JDA from the back portion of the house, the construction made by him has come to zero set back, on account which, the construction made by him might be required to be removed. In these circumstances, the appellant invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing SB Civil Writ Petition No.5720/2004 and claimed the reliefs mentioned earlier.

On service of notice, the JDA filed reply controverting the averments was in the writ petition. In reply, it was stated that the appellant was granted lease deed of the plot admeasuring 199.44 sq.yards measuring 40’ towards front side, 30’ towards back side and 50’ long but the appellant had made illegal encroachments which was required to be removed by the competent authority. It was stated in the reply that since the appellant was in possession of the excess land than granted to him, the officers of the JDA were

entitled to take action for removal of the encroachment. It was also mentioned in the reply that appellant had constructed one shop in the original area of zero set back in the disputed area which was illegal and which deserved to be demolished. According to the JDA, the appellant was not able to show any vested right over the land in dispute and, therefore, was not entitled to the reliefs claimed in the writ petition. It was also stated in the reply that the Tribunal had passed order on the basis of undertaking given by the learned counsel for the appellant and, therefore, the order passed by the Tribunal was not liable to be set-aside. By filing reply, the JDA demanded dismissal of the petition.

The learned Single Judge heard the learned counsels for the parties and considered the documents forming part of the petition. The learned Single Judge was of the view that appropriate order was passed by the JDA Appellate Tribunal after taking into consideration the facts of the case and, therefore, appellant was not entitled to the reliefs claimed in the petition. In view of the said conclusion, the learned Single Judge has dismissed the petition giving rise to the instant appeal.

This Court has heard the learned counsels for the parties at length and in great detail. This Court

has also considered the documents forming part of the petition.

The fact that appellant had encroached upon the land in question is not in dispute. It is also not in dispute that the appellant had undertaken before the Tribunal to remove the encroachment and sought extension of time to enable him to remove the encroachment. The plea that encroachment made shall have been removed as per the desire of the appellant, cannot be accepted. It may be mentioned that now the encroachment made by the appellant in the back portion of his house is already removed and that portion of the land is being used by the residents of another society. The plea that house of the appellant will come on the road and as the construction is liable to be demolished, the prayers made in the writ petition should have been granted, cannot be accepted because at the time of making illegal encroachment, the appellant should have visualized all such consequences. Grant of prayers made by the appellant in the petition would revive illegality and, therefore, the prayers made in the petition cannot be granted.

On the facts and in the circumstances of the case, this Court is of the opinion that no case is made out by the appellant to grant any of the reliefs

claimed in the petition.

Therefore, the appeal which lacks merit deserves dismissal.

For the foregoing reasons, the appeal fails and is accordingly dismissed. The notices are discharged. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), CJ.**

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